IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19 .06.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.15859 of 2001

NEPC Textiles Limited
Trichy Road,
Kannampalayam P.O.
Coimbatore,
Rep.by its Manager (Personnel & Administration) ... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. N.Shanmugam .... Respondents

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

For Petitioner : M/s.Gupta & Ravi
For Respondents : M/s.D.Hariparanthaman (for R2)

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorari, to call for the records connected with the impugned award, dated 24.07.2001, made in I.D.No.133 of 1998 by the first respondent and quash the award.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. It is the case of the petitioner company that the writ petition has been filed against the preliminary award of the Labour Court, Coimbatore, dated 24.07.2001, made in I.D.No.133 of 1998, wherein, the first respondent Labour Court has set aside an enquiry conducted into the charges levelled against the second respondent and five other employees of the petitioner company on the ground that the enquiry was not fair and proper, since they were denied reasonable opportunity of participation in the enquiry.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. It is the further case of the petitioner company that it is a Textile Mill engaged in the manufacture of yarn. The second respondent was an apprentice in the winding department. He was issued a charge memo, on 26.03.1997, for certain acts of misconduct committed by him. The charges levelled against the second respondent were that, on 18.03.1997, he had instigated Tmt.Renuga and Tmt.Thenmozhi to strike work in the mills and also induced other workers employed in the other departments to stop work. Thus, the second respondent had instigated the mill workers not to work and thereby causing loss of production and leading to financial losses. The illegal strike instigated by the second respondent was during the period between 18.03.1997 and 20.03.1997. Further, the second respondent was served with the charge memo, dated 26.03.1997, and was called upon to submit his explanation for the charges levelled against him. The second respondent after seeking time on several occasions submitted his explanation vide letter dated 28.04.1997. Since the explanation submitted by the second respondent was not satisfactory, the petitioner management had decided to conduct an enquiry. In order to avoid bias and for the reason that the enquiry should be fair and proper, an outsider was appointed as the enquiry officer. Due notice of the enquiry was served on the second respondent and the second respondent had fully participated in the enquiry proceedings. A common enquiry was held into the charges levelled against the second respondent as well as the other 5 charged employees, since the charges levelled against them were similar in nature and pertaining to the strike that took place in the petitioner company between 18.03.1997 and 20.03.1997.

5. It is the further case of the petitioner company that the enquiry was held in eight sittings on various dates in a span of two months. The enquiry officer had also briefed the petitioners about the enquiry procedure. During the enquiry, 11 witnesses were examined on behalf of the management in the presence of the second respondent and he had stated to the enquiry officer that he did not want to cross-examine some of the management witnesses despite being given an opportunity. The enquiry officer had accordingly recorded the statement and handed over the copies of the enquiry proceedings to the second respondent which was received by him without any objections. As far as the other management witnesses were concerned, they were cross-examined by the second respondent.

6. During the course of the examination of the management witnesses, there were 27 documents marked as exhibits in the presence of the second respondent and the second respondent was also called upon to let in evidence on his behalf. The second respondent had given a written statement, on 25.06.1997, as evidence on his behalf. During the further course of the examination of the employees' witnesses, nearly 14 documents were

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

marked as exhibits. In the enquiry held on 05.07.1997, the second respondent had stated that a request was made for examination of certain specific witnesses. Therefore, the enquiry was adjourned to 12.07.1997, in order to enable the employees to bring the above witnesses to be examined on their behalf, including the second respondent herein. However, the second respondent could not produce witnesses requested by him and therefore, the enquiry was again adjourned to 17.07.1997. In the meantime, by a letter dated 15.07.1997, addressed to the enquiry officer, the second respondent had stated that the General Secretary of the Union Thiru.S.Parthasarathy had requested that the enquiry be adjourned to 25.07.1997. Accordingly, the enquiry officer had adjourned the enquiry to 25.07.1997 on which date the tamil type written communication, dated 24.7.1997, was submitted on behalf of the employees wherein it was stated that one Thiru S.S.Ponmudi and the Union General Secretary Thiru S.Parthasarathy could not attend the enquiry and therefore, they wanted to examine one Thiru Kumaresan on their side and accordingly examined and the said witness was subsequently cross-examined by the management. Upon the conclusion of the examination of one Thiru Kumaresan, the second respondent and the other employees had stated to the enquiry officer that they have no further witnesses to be examined on their behalf and accordingly the enquiry was closed. Therefore, the second respondent had fully participated in the enquiry and had affixed his signature to acknowledge the same. The enquiry proceedings were recorded and copies of which were served to him. Later, the enquiry officer had submitted a report, dated 26.08.1997, wherein the charges levelled against the second respondent had been established. Based on which the second respondent was dismissed from service by an order, dated 13.10.1997, following due process of law.

7. Aggrieved by the dismissal order, dated 13.10.1997, the second respondent had raised a dispute. Notice was sent to the management in respect of the dispute raised by the the second respondent and the petitioner had appeared before the Conciliation Officer and filed a counter statement highlighting the facts as stated above. Since no settlement could be arrived at by the Conciliation Officer, the Conciliation Officer forwarded the failure report to the parties. Based on which the second respondent had raised an Industrial dispute before the Labour Court, Coimbatore, which was taken on file by the first respondent as I.D.No.133 of 1998, in which the second respondent had challenged the validity of the domestic enquiry conducted by the management stating that no opportunity was given to him by the enquiry officer to cross-examine the management witnesses. Based on the pleadings of the parties, a preliminary issue was framed by the first respondent in I.D.No.133 of 1998 as to whether the domestic enquiry conducted by the management into the charges levelled against the second respondent was fair and proper. In the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

preliminary issue, no oral evidence was let in on either side, but the documents filed, both on behalf of the petitioner management and the second respondent, were marked as exhibits, by consent.

8. After hearing the arguments advanced by both sides, the first respondent had passed an award, dated 24.07.2001, setting aside the elaborate enquiry conducted by the management stating that the employees were asked only a few questions. Since a common enquiry was conducted against six employees, enough opportunity was not given to them and that the enquiry officer had not stated any reasons as to why the employees did not cross-examine the management witnesses. Thus, the award was passed stating that the enquiry was not fair and proper. Aggrieved by the preliminary award made in I.D.No.133 of 1998, dated 24.07.2001, the petitioner management has preferred the present writ petition before this Court.

9. The learned counsel appearing for the petitioner management contends that the first respondent Labour Court has passed the preliminary award in I.D.No.133 of 1998, dated 24.07.2001, wrongly holding that the enquiry conducted by the petitioner management against the second respondent employee is bad in law, since he had not been given sufficient opportunity during the enquiry proceedings to cross-examine the management witnesses and for other reasons. It is further contended that the award of the Labour Court is totally erroneous, since it has not considered the fact that the second respondent had been given all reasonable opportunities during the enquiry proceedings to defend himself against the charges levelled against him in accordance with the principles of natural justice. If the award is held to be correct and valid, then the petitioner management will not be in a position to conduct a fresh enquiry on the charges levelled against the second respondent after such a long delay. In such circumstances, the award of the Labour Court, dated 24.07.2001, ought to be set aside holding the dismissal of the second respondent as valid and proper.

10. On the contrary, the learned counsel appearing for the second respondent has vehemently contended that it may not be proper for this Court to interfere with the award of the first respondent Labour Court at this stage, when only a preliminary award has been passed holding that the enquiry conducted against the second respondent was invalid due to non-adherence to principles of natural justice by the enquiry officer.

11. The learned counsel appearing for the respondent has placed reliance on the following decisions to show that the Courts have consistently held that it would not be proper for the Courts to interfere at the preliminary stage and has also emphasised that the petitioner management will not have anything to lose since they

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

could be given an opportunity of conducting a de novo enquiry against the second respondent for which he has no objections, even though the petitioner management had not raised such a plea before the Labour Court.

a. In Agro Cargo Transport Ltd., Tuticorin Vs. E.Murugesan & Another (1995 (1) LLJ 544) a Division Bench of this Court has held as follows :-

> "5. Before us, the learned counsel for the appellant placed reliance on a decision of the Supreme Court in State of Haryana Vs. Ratina Singh (1982-1-LLJ-46). That case did not arise out of an industrial dispute however, it related to a domestic enquiry held under the rules framed under Art.311 of the Constitution of India. While dealing with the domestic enquiry it has been observed thus :
>
> > " The essence of a judicial approach is objectivity, exclusion of extraneous materials or consideration and observance of rules of natural justice. Of course, fair play is the basis and if perversity, or arbitrariness or bias or a surrender of independence of judgment vitiate the conclusion reached"
>
> Whereas learned counsel for the appellant placed reliance on the observation made in the latter portion of the very same paragraph which is to the following effect.
>
> > " Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."

On a reading of the earlier observation and the later observation together in the aforesaid decision, it is seen that it has been laid in categorical terms that the domestic enquiry must be fair and it must be in conformity with the rules of natural justice. It is also the established legal position that normally the High Court, under Art.226 of the Constitution, does not interfere at the stage, as it is in the present case, on a finding recorded on a preliminary issue because it is open to the management to take up all the contentions at the later stage, if the award goes against it. As such, the management does not lose the right to challenge the correctness of the finding recorded by the Labour Court. Here, it may be relevant to notice a decision of the Supreme Court , in Cooper Engineering Limited Vs. P.P.Mundhe, (1975 -II-LLJ-379) wherein it has been held that it will be legitimate for the High Court to refuse to intervene at this stage

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of the proceeding before the Labour Court on a finding recorded on a preliminary issue. The relevant portion of the judgment is as follows :-

> "19. We are therefore clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.
>
> 6. Taking into account all these aspects of the matter, we decline to interfere with the order passed by the learned single Judge and keep open all the contentions advanced on both sides. The appeal is, therefore, dismissed. As the matter is of the year 1984, we direct the Labour Court to decide the dispute within four months from the date of receipt of a copy of this judgment."

b. In Shree Kumar Textiles (Private), Ltd Vs Labour Court and another (1997 (3) L.L.N.376) this Court has held as follows :-

> " 2. In the writ petition, the management sought for quashing the order, dated April 17, 1996, passed by the Labour Court in I.D.No.368 of 1992, holding that the domestic inquiry was not fair and proper, therefore, permitting the management to adduce evidence.
>
> 3. The learned Single Judge has held that it is not the stage at which interference is called for, as it is open to the management to challenge the correctness of the order, in the event, the award goes against the management.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. It is very strenuously contended by Sri Gnanadesikan, learned counsel appearing for the appellant, that the decision in Agro Cargo Transport Ltd Vs. E.Murugan (1995 (1) L.L.N.138), requires to be reconsidered in the light of the decisions of the Andhra Pradesh High Court and the Karnataka High Court in Glaxo India, Ltd. Vs. Presiding Officer (1993 - I L.L.J.626) and Motor Industries Company , Ltd V. D.Adinarayanappa (1978 (1) L.L.N.500).

5. We may point out here that the aforesaid decision in Agro Cargo Transport , Ltd V. E.Murugan (1995 (1) L.L.N. 138) (vide supra), has been rendered on the basis of the judgment of the Supreme Court in State of Haryana Vs. Rattan Singh (vide supra). In the decision of the Karnataka High Court in Motor Industries Company, Ltd Vs. D.Adinarayanappa (1978 (1) L.L.N.500) (vide supra), the decision in State of Haryana Vs. Rattan Singh (vide supra), has not been considered. Similarly, in the case of Glaxo India, Ltd Vs. Presiding Officer (vide supra), the finding was arrived at in violation of the principles of natural justice, inasmuch as the Presiding Officer examined himself as a witness in the inquiry. In the decision of this Court, referred to above, such an exception is carved out stating that the domestic inquiry must be in conformity with the rules of natural justice. In any case, if the enquiry does not conform to the principles of natural justice, it would be a case for interference. The order passed by the Labour Court satisfies the requirements that it is a speaking order and it has been passed after hearing both the sides on the basis of the evidence by the parties. That the conclusions arrived at by the Labour Court are correct or not, is not a matter for examination at this stage. Therefore, we do not see that there is any case for reconsidering the view taken by this Court in Agro Cargo Transport, Ltd Vs. E.Murugan (vide supra). We may also point out that the appellant-management is not in any way prejudiced, because it has an opportunity to adduce evidence. In the event, the award goes against the management, it will be open to the management not only to challenge the ultimate award, but also the order passed by the Labour Court, directing the management to adduce evidence on the ground that the domestic inquiry was not fair and proper.

C. In N.Gurumurthy Vs. Second Additional Labour Court, Madras & Another, (1995-1 L.L.N.1022) this Court has held as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"6. Learned Single Judges of this Court have taken a view that it would not be appropriate to hold that under no circumstances, this Court can interfere with the finding recorded on the preliminary issues. The view taken is that depending upon the facts and circumstances of the case, it would be open to this Court to interfere in exercise of jurisdiction under Art.226 of the Constitution Tube Products of India Vs. Labour Court (1994 - II L.L.N.203). Learned Single Judges of the High Court of Karnataka have also taken the similar view see Motor Industries Company, Ltd. Vs. D.Adinarayanappa and another (1978-I L.L.N.500) and Vysya Bank, Ltd Vs. M.Namadeva Pai (1994-II L.L.N.417). In Agro Cargo Transport, Ltd Vs. E.Murugan (1995 - I L.L.N.138), this very Bench has, after referring to Para.22 of the judgment of the Supreme Court in Cooper Engineering Ltd. Vs. P.Mundhe (1975 - II L.L.N.321), declined to interfere with the finding recorded on the preliminary points. It may be pointed out here that the Labour Court are presided over by judicial officers of the rank of District Judges. The proceedings before the Labour Court are conducted strictly in accordance with the norms of the judicial proceedings under the Industrial Disputes Act. An award is also required to be passed within a period of three months. If this Court were to interfere in each and every case wherein findings are recorded relating to jurisdiction of the Labour Court or the fairness or otherwise of the domestic inquiry, it would not be possible to pass an award within a period of three months. In addition to this, the finding recorded on such preliminary issues will not become final merely because such findings are not challenged before the award is passed. Those findings will become part of the final award that would be passed and it would be open to the aggrieved party to challenge the same, while challenging the main award itself. Such a course would avoid prolongation of the proceedings and would curtail the period of litigation and at the same time would enable the Labour Court to pass the award as far as possible within the period prescribed by the Act.

7. Another aspect that should be taken into consideration is that the management will be in a position to drag on the matter as long as it can. The workman will not be in a position to contest the proceedings because he will not be having anything for his subsistence in the case of dismissal or removal or termination from service. In the event an award is passed in favour of the workman and if the management

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

were to challenge the same in a petition under Art.226 of the Constitution, S.17B of the Industrial Disputes Act comes to the aid of the workman and makes the Court to grant relief to the workman, pending disposal of the writ petition in terms of S.17B of the Act, which will provide some means for the workman to subsist. It is to avoid such a liability which would accrue on the passing of the final award, all attempts are made by the management to stall the proceedings as long as possible. Even in a case where an award goes in favour of the workman, the tendency of the management is to drag on the proceedings. It is to curb such tendency and also to ensure that the workman is paid at least the wages last drawn during the pendency of the petition under Art.226 of the Constitution, challenging the award directing reinstatement, S.17B has been incorporated. Further, by entertaining the writ petition on a preliminary finding, this Court will not be advancing the cause before the Labour Court, and it would be only adding to the delay. Taking into consideration all the aspects, the Supreme Court in Cooper Engineering Ltd Vs. P.P.Mundhe (1975-II L.L.N.321) (vide supra), has specifically held thus, in Para.22, at page 327:

> " We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

observations in our anxiety that there is no undue delay in industrial adjudication."

The Supreme Court in D.P.Maheswari Vs. Delhi Administration and others (1984 - I L.L.N.1), has noticed how the management has been able to drag on the proceedings to the detriment of the workman and it has been observed that it is worthwhile remembering that the nature of the jurisdiction under Art.226 is supervisory and not appellate, while that under Art.136 is primarily supervisory, but the Court may exercise all necessary appellate powers to do substantial justice and that in the exercise of such jurisdiction, neither the High Court nor the Supreme Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues. The circumstances which led the Supreme Court to make such observations, have been noticed in the earlier portion thus in Para 1, at page 2:

". . . There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art.226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art.226 of the Constitution nor the jurisdiction of this Court under Art.136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues avoiding decision on issues more vital to them. Articles 226 and 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must, therefore, ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Art.226 is supervisory and not appellate while that under Art.136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

In S.K.Verma Vs. Mahesh Chandra and another (1983 - II L.L.N.637), it has been observed thus, in Para.2, at page 639:

> "There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a Tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State, instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation, etc., should attempt to evade decision on merits by raising such subjections and, never thereby satisfied, carry the matter oftentimes to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from Court to Court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforth refrain raising needles objections, fighting needless litigation and adopting needless postures"

8. Taking into consideration all these aspects we are of the view that the findings recorded by the Labour Court on preliminary issues such as whether the domestic inquiry has been fair or proper or the Labour Court has jurisdiction to entertain the dispute or whether the person claiming the status as a workman is a workman or not, should not be interfered with, unless such findings are recorded without notice to any one of the parties or recorded without any reason. The point raised for determination is answered accordingly. The preliminary order challenged in the writ petition does not fall in any one of the aforesaid exceptions. Therefore, we see no ground to interfere with the order passed by the learned Single Judge.

d. In Engine Valves, Ltd.(represented by its Vice-Chairman and Managing Director) Vs. Industrial Tribunal, Madras, and another, (1996-1 L.L.N.167) this Court has held as follows :-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"4. In a recent decision rendered by us in N.Gurumurthy Vs. Second Additional Labour Court, Madras, and another (1995 - I L.L.N.1022), the finding recorded on a preliminary issue by the Labour Court was involved and we have held after referring to the various decisions of the Supreme Court as follows in Para.8 at page 1026:

> "Taking into consideration all these aspects, we are of the view that the findings recorded by the Labour Court on preliminary issues such as whether the domestic enquiry has been fair or proper or the Labour Court has jurisdiction to entertain the dispute or whether the person claiming the status as a workman is a workman or not, should not be interfered with, unless such findings are recorded without notice to any one of the parties recorded without any reason. The point raised for determination is answered accordingly. The preliminary order challenged in the writ petition does not fall in any one of the aforesaid exceptions. Therefore we see no ground to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeal is rejected ..."

5. It is contended by the learned counsel for the appellant, that the case on hand does not fall within the ratio of the aforesaid decision, inasmuch as in that decision, the decision of the Supreme Court in Desh Raj Gupta Vs. Fourth Industrial Tribunal, Lucknow, and another (1991 - I L.L.N.965) has not been taken into consideration. It is submitted that as per the decision of the Supreme Court in Desh Raj Gupta case (vide supra), if the order of punishment passed by the management is declared illegal, the date of dismissal cannot relate back to the date of the illegal order of the employer and the party concerned would be entitled to his salary from the date of dismissal till the date of order of the Tribunal. The relevant portion of the judgment in the said decision reads thus, in Para.9, at page 968:

> " The second ground urged in support of the appeal appears to be well founded. The learned counsel is right in relying on the observations in Gujarat Steel Tubes, Ltd Vs Gujarat Steel Tubes Mazdoor Sabha (1980-I L.L.N.230), that if the order of punishment passed by the management is declared illegal and the punishment is upheld subsequently by a Labour Tribunal, "the date of dismissal cannot related back to the date of the illegal order of the employer. The appellant is, therefore, entitled to his salary from 16 August 1976 to 30 July 1980 and the entire amount should be paid by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the respondent-bank within a period of three months from today. If the amount is not paid or offered to the appellant as directed, the respondent-bank will be liable to pay interest thereon at the rate of 12 per cent per annum for the future period commencing on the date of expiry of three months from today till the same is realised."

Based on the aforesaid observations of the Supreme Court, it is contended that in the instant case the Tribunal has held that there was no fair and proper opportunity given to the workmen and as such, it has given opportunity to the management to adduce evidence to prove the charges and in the event the Tribunal holds that the charges are proved, as per the decision of the Supreme Court in Desh Raj Gupta case (1991-I L.L.N.965) (vide supra), the order of dismissal will be operating only from the date of the order of the Tribunal and as such, the management would be required to pay full wages from the date of dismissal till the date of the order of the Tribunal. Therefore, the correctness of the preliminary order passed by the Tribunal requires to be considered under Art.226 of the Constitution. We may point out here that the fact that this Court does not interfere with such preliminary order and keeps all the contentions open, is only intended to ensure that there is no delay caused in the disposal of the dispute by the Tribunal or Labour Court and it does not in any way affect the right of the management to challenge the validity of the order, in the event it becomes necessary for it to challenge the award. If this Court affirms the preliminary order of the Tribunal, the result would be as stated in the decision in Desh Raj Gupta cases cited Supra and not otherwise. It is further contended that based upon the preliminary finding recorded by the Industrial Tribunal in question, the workmen have already sought for interim relief. We may point out here that the finding recorded on a preliminary issue does not set aside the order of dismissal and that it only records that a fair and proper opportunity has not been afforded to the workmen and therefore, the management has to prove the charges by adducing additional evidence. The question as to whether the workmen would be entitled to interim relief or not is a matter which the Tribunal has to decide on the facts and circumstances of the case and not on the basis of the preliminary finding recorded. Subject to the above observation, all the contentions of both parties are left open. Accordingly, the writ appeal is dismissed."

e. In Sri Ramanarayan Mills Ltd (rep.by its M.D.), Coimbatore Vs. Presiding Officer, Labour Court, Coimbatore and Another this Court has held as follows :-

" 3. On the other hand, Sri.N.G.R.Prasad, learned counsel appearing for the respondent submitted that whatever may be the finding arrived at by the Labour Court at the preliminary stage

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that finding cannot be put in issue. Even these issues can be reappreciated by the Labour Court on the basis of evidence to be let in. Learned counsel for the second respondent relied on two Division Bench judgments of this Court in Shree Kumar Textiles (Private) Ltd. Vs. Labour Court and another 1997 (3) L.L.N 376 and in Agro Cargo Transport Ltd. Vs. E.Murugan and another 1995-I-LLJ-544 (Mad-DB) .....

5. I am of the view that the findings with which the petitioner is stated to be aggrieved cannot be stated to be final decision taken on the issue. In order to give a finding as to whether the inquiry has been conducted in a proper and fair manner, necessarily the facts have to be stated and a speaking order has to be passed. In such process, it is incumbent upon the Labour Court to discuss the fact and also couch the wording so as to give reasoning for arriving at the finding on the preliminary issue. That by itself cannot be put against the Labour Court. If no reasoning is stated to answer the preliminary issue that would be put against the Labour Court to contend that the labour Court has jumped over the finding without discussing the point. It is well settled proposition of law that the order passed by the Labour Court should satisfy the requirements of speaking order. That the conclusions arrived at by the Labour Court are correct or not, is not a matter for examination at the preliminary stage. The management is equally entitled to have an opportunity to adduce evidence. That is the law laid down by the Division Bench of this Court in Shree Kumar Textile(Private) Ltd. Vs. Labour Court and another. The same is the law laid down in the decision of the Division Bench of this Court in Agro Cargo Transport Ltd Vs. E.Murugan and another.

f. In S.Thilagavathi Vs. Madurai Childrens Aid Society & Another, this Court has held as follows :-

.... the Supreme Court has time and again pointed out that against a decision on a preliminary issue, writ petitions should not be entertained thus delaying the adjudication of the matter.

For instance, in this case, the appellant was dismissed on 18.09.1990 and till today (14.08.1997), we are still on the preliminary issue alone. This is precisely the reason why the Apex Court has time and again pointed out that such writ petitions should not be entertained. The well known case is the one reported in D.P.Maheswari Vs. Delhi Administration (1983 (II) L.L.J.425). That view has recently been affirmed by the Supreme Court in NATIONAL COUNCIL FOR CEMENT AND BUILDING MATERIALS Vs. STATE OF HARYANA

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

AND OTHERS (1996 (II) L.L.J.125). In this case before apex court, the Industrial Tribunal has decided to hear the preliminary issue along with other issues on merits. This discretion of the Tribunal was interfered with by the High Court in writ proceedings. The Apex Court has pointed out that the discretion exercised by the Industrial Tribunal should not be interfered with by the High Court in writ proceedings. We are of the opinion that the above decision applies in all fours to the present case.

g. In PHI Seeds Ltd Vs. The Special Deputy Commissioner of Labour and another, this Court has held as follows :-

" 3. Ordinarily writ petitions are not entertained against interim orders. In Labour matters, particularly, writ petitions are not ordinarily entertained interim orders of the Labour Court or any other authority vide "The Cooper Engineering Limited Vs. P.P.Mundhe (AIR 1975 SC 1900). The reason for this principle is that if writ petitions are entertained against interim orders, then in one case there may be ten interim orders and against every interim order a writ petition may be filed and stay orders may be sought. This may drag on the proceedings for a very long time causing great hardship to the parties and also great expenditure. Hence, ordinarily writ petitions are not entertained against interim orders. We, therefore dismiss this writ appeal, but we leave it open to the parties to raise all pleas, which they wish to raise, and even challenge the findings in interim orders passed in the appeal (including the findings in the impugned order) after the appeal is finally disposed of.

H. In Selvam Sankarasubbu Vs. Lufthansa German Airlines & another, this court has held as follows :-

" 9. Against interim orders, the writ petitions shall not be entertained for it prolongs the proceedings causing great hardship to the parties. Reliance was placed by the learned counsel for the employee on the judgment, dated 24.01.2005, in WA.No.1728 of 2004 which also arose out of an interim order passed in an appeal under Section 41(2) of the Act. The First Bench confirmed the dismissal of the writ petition holding that the writ petition ought not to be ordinarily entertained against the interim orders."

In the given facts and circumstances of the case and in view of the decisions quoted above, this Court is of the considered view

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that it would not be proper for this Court to interfere with the preliminary order of the Labour Court, dated 24.07.2001, made in I.D.No.133 of 1998 . However, it is made clear that it is left open to the petitioner management to conduct a de novo enquiry before the Labour Court, as provided under law, to establish its claims with regard to the alleged charges against the second respondent. The first respondent labour court is directed to complete the proceedings within a period of four months from the date of receipt of a copy of this order.

With the above directions the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssm

To

The Presiding Officer,
Labour Court,
Coimbatore.

1 cc to Mr.D. Gupta Ravi, Advocate, Sr. 25554

WRIT PETITION No.15859 of 2001
and W.P.M.P.No.23504 of 2001

PLI (CO)
kk 23/6

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/